

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

ENTERTAINMENT COMMUNICATIONS, INC.

Employer

and

Case 19-UC-651

AMERICAN FEDERATION OF TELEVISION
& RADIO ARTISTS, SEATTLE LOCAL

Petitioner

DECISION AND ORDER CLARIFYING UNIT
AND
DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. By its petition, the Petitioner seeks to have its contractual unit² clarified by the addition thereto of Ron Callan and Terry Rose, whom the Employer contends are supervisors, and Brian Gregory, whom the Employer contends is an independent contractor.

¹ Briefs were received from both parties and were duly considered. However, the Employer submitted also an addendum to its brief, well beyond the brief due date. While that addendum merely cited a case, the Employer is reminded of the Board's brief-filing rules and cautioned to timely submit such materials; citation of an additional case is permissible only for post-brief decisions.

² The unit is as follows: All staff and free-lance actors, singers and announcers, all combination announcers and others who also operate equipment such as boards and consoles and similar equipment, and all employees who are employed to perform before the microphone (hereinafter referred to as the "artists"), and Producers, Editors,

The Employer is engaged in the operation of several radio stations in Seattle, Washington, including KIRO-AM, KIRO-FM and KNW-AM. It purchased these stations from Bonneville International Corporation in March 1997. The Petitioner and Bonneville had a collective bargaining relationship of many years' duration and a collective bargaining agreement which, by its terms, was to expire December 31, 1997. Entercom did not assume this agreement. Rather, the parties executed an interim agreement and began negotiating their own complete collective bargaining agreement. At time of hearing, no agreement had been reached. However, the negotiations made it clear that the Employer considered Callan and Rose to be excluded from the unit on supervisory grounds and Gregory excluded on the grounds he is an independent contractor rather than an employee.³ Unable to resolve the issues, the Petitioner filed the instant petition.⁴

The Employer's operations are headed by John Carlson, whose title was not given on the record. Kris Olinger reports to Carlson and serves as program director. In that capacity, she is responsible for everything that is broadcast by the three radio stations comprising the Employer's operations. Reporting to her are managing editor John King, sports director Ron Callan, production director Terry Rose, and promotion director Karen Reid. It is the Employer's position that these four have the same level of authority and that each is a supervisor.

Independent Contractor Issue

Brian Gregory, who has worked as an "on-air personality" for over 20 years, is the Employer's business editor and news anchor, whose news spots are heard on KIRO-FM and KIRO-AM. He worked as a unit employee for Bonneville as a news reporter and anchor until the Employer's takeover of the operation in March 1997, at which time Gregory was laid off. Late that summer he received a call from the then program director Tom Clendening,⁵ who offered him the position of business news editor/reporter, which required presenting that news every half hour during the morning commuter drive and the recording of similar reports for broadcast during the evening commute.⁶ Such work was to be performed each weekday. Clendening mentioned that the position would have to be posted but that had not yet occurred, but did state he needed Gregory immediately. He asked how much Gregory had earned when working for Bonneville and, upon learning the amount, stated Gregory would be paid the same

Desk Assistants, and Board Operators (hereinafter referred to as "Off-Air Personnel") employed by Entercom at the KIRO Stations; but excluding engineers or technicians who are employed to perform engineering or technical services such as transmitter operation, equipment maintenance and repair and related services, all other employees, guards and supervisors as defined in the Labor Management Relations Act of 1947, now or hereafter employed.

³ Originally, the petition also sought to have managing editor John King and producer Dustin Hornby declared to be supervisors and excluded from the unit on that basis inasmuch as the parties did not agree on their unit placement during negotiations. At hearing, however, the Employer agreed to their exclusion and, thus, those issues are not before me. (John King and Dustin Hornby are referred to erroneously in the Petitioner's brief as John Miller and Dustin Peary.)

⁴ The Petitioner also filed a grievance which was apparently still unresolved at time of hearing.

⁵ Clendening did not testify. All evidence concerning Gregory's hire was given by Gregory.

⁶ Subsequently, Gregory's duties were expanded to include being a news anchor, a move that somewhat increased his work hours to their current level.

hourly rate⁷ by the Employer. Gregory was told to invoice the Employer and to “check back” with Clendening in two weeks concerning the job posting. Thereafter each time Gregory asked Clendening about the posting, he was told it had not yet been done and, finally, that Clendening did not know when posting would take place. In fact, posting has never occurred and Gregory continues to work under the terms of the original agreement⁸ with Clendening. Gregory receives no fringe benefits, such as participation in a 401(k) plan and vacation, which are enjoyed by the Employer’s employees. He is responsible for paying his own taxes and Social Security obligations. He is not on the Employer’s payroll and is not eligible for workman’s compensation or unemployment benefits. He once included on his bi-weekly invoices a luncheon expense, which the Employer paid, though he is not paid for mileage should his interviews take him outside the studio.⁹ While his contract with the Employer does not forbid his accepting work for other stations, Gregory does not seek such work but, instead, makes his living solely on the income received from the Employer. He testified that he does not know whether he is able to reject work. The record reflects he has never attempted to do so and that he has never been informed by the Employer that he is able to do so. The record does not show that he maintains any sort of business operation or that he performs work in any name other than that of the Employer.

Gregory’s work day begins at 5:30 a.m., when he arrives and begins to prepare the day’s news stories. His day ends at about 2 p.m. He works in a cubicle set aside for his use. Other news employees work in the same area and have similar work spaces assigned to them. The Employer provides all equipment needed by Gregory, just as it does for regular reporters and anchors, such as magazines, newspapers, computer, telephone, television, cassette recorder and cart machine. Gregory’s first newscast of the day airs at 6 a.m. Others present in the work area and engaged in presentation of the shows (one on KIRO-AM and the other on KIRO-FM) are co-host Lisa Foster, who gives news on the half-hour, show host Pat Cashman, sports director Ron Callan,¹⁰ hosts Bill Yeend and Jane Shannon, and producers Scott Peters and Dustin Hornby, none of whom are contended to be independent contractors. Gregory’s last morning broadcast airs at 9 a.m. Thereafter, he performs off-air duties, including archiving the morning stories in the computer and preparing and recording the afternoon broadcasts.

Gregory is not authorized to determine the length of time his news stories warrant. Should an important event occur which he feels worthy of more time than that allotted by the Employer, he testified he would probably have to discuss the matter with the show hosts and seek their agreement. When extra time has been allotted to one of Gregory’s news stories, it has come about as a result of his having asked for that time. Program director Kris Olinger determines when commercials will air and the FCC determines issues involving airing the stations’ call letters. Gregory selects the content of his news broadcasts, which includes deciding what is newsworthy, which words and sound bites to use, whom to interview and what questions to ask them. Gregory testified that news anchors, considered employees, “to some extent” determine what is newsworthy and select sound bites, while editors, also employees, are

⁷ Only once has Gregory been paid overtime. On that occasion the stock market had dropped 500 points and he was asked to stay to report that news.

⁸ The contract is entitled “Agreement for Independent On-Air Commentators and Guests.” Its terms specify Gregory’s title, working hours and hourly rate of pay.

⁹ Gregory did not know, and the record does not show, whether regular employees receive reimbursement for mileage.

¹⁰ Gregory believes Callan may be the only other individual with a schedule similar to his own, i.e., going continually between the broadcast studio and work cubicle hourly or on the half-hour to present a particular type of news.

more involved than the anchors in determining who to interview. Rarely does managing editor John King assign him stories to cover. King is in charge of the Employer's reportorial staff, to whom he daily assigns breaking stories. When King has come to Gregory, it has been to assign work, not to ask whether Gregory wished to accept additional tasks. Gregory, however, has never actually been told that King (or anyone else) is his supervisor. He testified that King, in addition to giving him some assignments, has occasionally critiqued his work.¹¹ News reporters employed by the Employer utilize the same equipment as does Gregory, perform the same task of gathering news and preparing it in written form for broadcast. Gregory is not required to maintain any records not maintained by regular employees.

Independent contractors are excluded from bargaining units in accordance with Section 2(3) of the Act. In determining whether an individual in an independent contractor, the Board uses general agency principles. The major test utilized is that of "right of control." *Associated General Contractors*, 201 NLRB 311 (1973); *Lakes Pilots Association*, 320 NLRB 168 (1995); *Roadway Package System, Inc.*, 326 NLRB No. 72 (1998); *Dial-A-Mattress Operating Corporation*, 326 NLRB No. 75 (1998). Under this test an individual is found to be an employee if the employer retains control over the means as well as the end to be achieved. If it retains control over only the end to be achieved, the individual is an independent contractor. The test as described by the Board in *Standard Oil Co.*, 230 NLRB 967 (1977):

Among factors considered significant at common law in connection with the "right to control" test in determining whether an employment relationship exists are (1) whether individuals perform functions that are an essential part of the Company's normal operation or operate an independent business; (2) whether they have permanent working arrangement with the Company which will ordinarily continue as long as performance is satisfactory; (3) whether they do business in the Company's name with assistance and guidance from the Company's personnel and ordinarily sell only the Company's products; (4) whether the agreement which contains the terms and conditions under which they operate is promulgated and changed unilaterally by the Company; (5) whether they account to the Company for the funds they collect under a regular reporting procedure prescribed by the Company; (6) whether particular skills are required for the operations subject to the contract; (7) whether they have proprietary interest in the work in which they are engaged; and, (8) whether they have the opportunity to make decisions which involve risks taken by the independent businessman which may result in profit or loss.

Whether the contract between the employer and individual may or may not call the individual an independent contractor is not dispositive. *Big East Conference*, 282 NLRB 335 (1986). Nor is the question resolved by whether the employer makes payroll deductions or whether the individuals pay their own taxes and Social Security obligations. *Diamond Cab*, 164 NLRB 859 (1967). Each situation must be decided upon its particular facts.

I am persuaded that Brian Gregory is not an independent contractor, but is an employee within the meaning of the Act. He was hired into his present situation with the expectation that it would evolve into a regular position upon posting, but because the Employer needed Gregory's services immediately (presumably before posting could occur), it was necessary to enter into a contract. Gregory was led to believe that situation would be temporary and would be changed once posting could be completed. His contract set his work hours¹² and specified his work role, that of business editor/reporter. Clendening set

¹¹ The Employer has no formal evaluation system.

¹² The Employer asserts that Gregory's hours are "...determined by the on-air schedule, not the whims of Entercom." In fact, that is not unlike the situation in numerous other employment settings and, in fact, is true

his wages unilaterally. The pay rate is on a per hour basis, not a per project basis. Importantly, the work performed by Gregory constitutes an essential part of the Employer's operations. Regular employees also gather and broadcast the news and these presentations are a normal and daily feature of the Employer's programs. Gregory works in the same area and with the same equipment as regular employees. This equipment is furnished entirely by the Employer.¹³ Gregory does not operate as a separate business entity¹⁴ and has no proprietary interest in the Employer. In performing his work Gregory has no opportunity to make decisions which involve entrepreneurial risks which might lead to his financial gain or loss. He has no way to increase revenues or cut costs that would inure to his benefit. While he has control concerning the content of his news stories including the determination of what is newsworthy, his testimony that anchors and editors have somewhat similar control went un rebutted. While it is obvious that managing editor King exercises control over news stories by making story assignments to reporters, the record reflects that he has called upon Gregory on a number of occasions to perform the same work as his pool reporters. Gregory cannot control the length of time he may be on the air; that is established by the Employer. Should he believe more time than that allotted should be given to one of his stories, he has to persuade others of that wisdom. The foregoing facts convince me that it is the Employer, not Brian Gregory, who retains control over the manner in which the work is performed, as well as the end to be achieved.

The Employer relies in part on *Twin City Freight, Inc.*, 221 NLRB 1219 (1975), in which the Board found a dray agent to be an independent contractor, partly upon the fact that that employer did not deduct taxes. That case, however, is far different from the matter at hand and that employer's not deducting taxes was not the pivotal fact in the Board's decision. In *Twin City* the individual and his wife were incorporated as a dray agency; the individual was responsible for supplying and paying for his own truck tractor; hired his own employees and determined their terms and conditions of work; set his own work hours and those of his employees; used his own discretion to determine the order and timing of making deliveries; was paid a fee based on weight and mileage rather than time; and he paid the expenses for his tractor. Accordingly, I conclude that Gregory is not an independent contractor, but rather a unit employee. Accordingly, I shall clarify the Unit to add the position of business editor.

Supervisory Issues

A supervisor is defined by the Act as:

"...any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

concerning the many of the Employer's own employees. The important fact is that Gregory may not set his hours; they were determined by the contract he signed when hired and were extended thereafter by the Employer's having given him additional duties.

¹³ The record does not reflect any expenses paid by Gregory other than routine commuting expenses. Everything from office to phone to computer to subscriptions to pens is furnished by the Employer.

¹⁴ There is no indication he syndicates his programs, or could do so.

This definition is interpreted in the disjunctive and the possession of any one of the listed types of authority is sufficient to find an individual to be a supervisor providing the exercise of such authority requires the use of independent judgment on behalf of management and not in a routine manner.. *Queen Mary*, 317 NLRB 1303 (1995); *Bowne of Houston*, 280 NLRB 1222 (1986) It follows that when evidence shows the exercise of otherwise supervisory authority is performed in a routine, clerical, perfunctory, or sporadic manner, the individual under scrutiny is not found to be a supervisor. *Bowne of Houston*, supra. The burden of establishing supervisor status rests upon the party asserting its existence. *Bennett Industries*, 313 NLRB 1363 (1994). Congress has stressed that only persons vested with “genuine management prerogatives” be found supervisors, as opposed to “straw bosses, leadmen, ... and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985) (citing S. Rep. No. 105, 80th Cong. 1 Sess. 4 (1947), affd. in relevant part 794 F.2d 527 (9th Cir. 1986). Therefore, it is the Board’s duty not to construe it too broadly inasmuch as the individual thus found to be a supervisor is deprived of rights the Act is intended to protect. Supervisory status has been found when the subject assigns overtime. *Westinghouse Broadcasting*, 188 NLRB 339 (1972). However, when the assignment of overtime is due to the necessity of replacing an absent employee, supervisory status is not thus conferred inasmuch as such an assignment does not require use of independent judgment. *Chevron Shipping Co.*, 317 NLRB 379 (1995). Supervisory status has also been found when an individual assigns work and has sole responsibility for the departmental or group workload. *Custom Bronze & Aluminum*, 197 NLRB 397 (1972). Assignment of work, however, must involve independent judgment and not merely a decision based on knowledge of employees’ specific skills. *Quadrex Environmental Company*, 308 NLRB 101 (1992). Individuals having the authority to effectively recommend any of the actions listed in Section 2(11) are supervisors. *Detroit College of Business*, 296 NLRB 318 (1989). Thus, where the evidence shows that the recommended action was taken without independent investigation by higher authorities, the recommending individual is a supervisor. *Elliott-Williams Co.*, 143 NLRB 811 (1963). When there is insufficient evidence that the individual possesses any of the primary supervisory indicia, secondary indicia by themselves are insufficient to make a supervisory finding. *St. Alphonsus Hospital*, 261 NLRB 620 (1982); *J.C. Brock Corp.*, 314 NLRB 157 (1994). Such secondary indicia include checking employees’ timecards, attendance at management meetings (particularly when evidence fails to show that personnel or work policies are discussed at such meetings), allowing employees to leave work early, receiving higher pay or enhanced benefits and, finally, the ratio of supervisors to employees. *Clark Machine*. 308 NLRB 555 (1992); *J.C. Brock Corp.*, supra; *Hydro Conduit*, 254 NLRB 433 (1981).

Ron Callan

Ron Callan, the Employer’s sports director, worked many years for Bonneville and was hired by Entercom upon its purchase of the Seattle radio stations in 1997. When he worked for Bonneville, he was a member of the Petitioner’s unit. He reports directly to program director Kris Olinger.

The sports department is separate from the Employer’s news department and has its own working area and equipment in the Seattle facility. The sports department employees work in an open area rather than individual cubicles, such as are found in the news department. In addition to Callan, regular sports department employees include Steve Rudman, Mike Brown and Art Thiel. Callan testified that he “supervises” these individual as well as some part-timers. Rudman works from 1 to 9 p.m., although his hours tend to vary depending on the Mariners baseball schedule. He also presents sports news on the p.m. commuter drive and a talk show in the evening hours. Brown is a part-time employee whose hours vary from day to day. Specifics concerning Thiel were not given.

While the record does not specify how Rudman and Thiel receive their assignments, Callan assigns Brown’s work to him on a weekly basis. Callan assigned him to do one-half of the 105 Seahawk football reports, while Callan presents the other half. Brown has the discretion of deciding when to

prepare these reports. Callan testified that while he could have hired someone else to make these presentations, he chose Brown for the latter's skills and knowledge and because he was already the producer of the Employer's "Seahawk Football" program. In making his decision, Callan testified that he consulted with Olinger, but did not indicate that it was Olinger who made the decision. Brown also attends weekly Seahawk news conferences. With regard to interviewing individuals attending these conferences, Callan testified that while he (Callan) determines who should be interviewed, he also testified that he and Brown discuss it and that "we're a team."

The Employer's sports department employees work as a team for weekend Seahawk game broadcasts. Included, in addition to Brown and Callan, are board operator Ian Henry, audio editor Mike Montgomery, reporter Paul Moyer, play-by-play announcer Lee Hamilton, color commentator Steve Raible, promotions person Jason Valentine, engineers Paul Robertson and John Gholson and, at times, interns. Most of the foregoing individuals are in the bargaining unit.

Callan broadcasts sports segments between 5 a.m. and 9 a.m. Monday through Friday. Working with him are Alan Ray, Bill Yeend, Jane Shannon, and a desk assistant. Most or all of the foregoing are in the unit. Callan's work day begins about 4 a.m. and ends about 12:30 p.m. During the first hour he is busy assessing stories and preparing the spoken word and sound bites he will use on each of the 16 broadcasts he makes during the morning commuter hours. His preparation requires his checking wire copy from the computer, reading the newspapers and checking voice mail as well as writing 16 different on-air segments, which range from four or five seconds to two minutes in duration. After 9 a.m. he testified that his work consists of writing, further preparation and "...any job hirings I may have to make that day...."

The sports department is responsible for broadcasting news of Mariner and Seahawk games and activities held both in Seattle and at various cities across the country. In this regard, Callan is the individual who hires the personnel needed. He testified that he hired Mike Montgomery to work the Seahawks' 21-game season and, if needed, playoff games. He did so without consulting with Olinger. In other hiring instances the record shows he has chosen to consult with her. Thus, he recommended the hire of Joe Andriotto to cover the Mariners' spring training in Arizona. Altogether, he hired six individuals within the six months prior to the hearing, some for as brief an assignment as one game. Some of the individuals he has hired have filled positions of longer duration, such as Paul Moyer, who was hired in July to cover the 1998 Seahawk broadcasts. In that instance, Callan was asked to find someone, preferably a former athlete. He knew of Moyer, who had done work for a local television station, and contacted him with the offer of an interview. He also contacted and interviewed a second candidate. After passing the initial interview with Callan alone, Moyer was interviewed by Callan and Olinger together. The hiring, according to Callan, was a joint decision of Olinger and himself, and together they agreed upon a wage range for Moyer's position. The record shows that Moyer's role had the potential of becoming a full-time talk show host position if Callan and Olinger decided he had done well.

Callan's duties for the Employer entail more responsibility than for Bonneville, when he was in the bargaining unit. Thus, he prepares the departmental budget, which is then modified and approved by Olinger before being passed on to the Employer's headquarters in Philadelphia. He also represents the Employer at various seminars and attends the Employer's management retreats. He testified that he is authorized to discipline employees,¹⁵ though the two instances of such action were more in the nature of counseling. In neither instance was a disciplinary record made. He testified that he has overall, day-to-

¹⁵ The Employer conceded it has no formal disciplinary policy and that it has never specifically told Callan or Terry Rose they possess the authority to administer discipline.

day, responsibility for the work produced by his department, including making sure all positions are filled and work performed in an acceptable manner. He also has a role in determining when an employee's duties should be changed, as in the case of Brown. In that instance, Callan effectively recommended to Olinger that Brown's duties be increased to take a more active role on the Employer's Seahawk broadcasting team. Callan also is responsible for choosing which employee will fill air time, grants time off requests without consulting Olinger and finds replacements for the absent employees, determines when overtime is needed and who should work it, and decides who to send to out-of-town games. With regard to these games, Olinger must approve the trip inasmuch as it is a cost item, but it is Callan who determines which employee should go. Callan also attends the Employer's weekly supervisory meetings along with Olinger, King, Hornby and Terry Rose. Callan receives the same benefits as all employees of the Employer and earns considerably more than those in his department.

The record clearly establishes that Ron Callan is a supervisor within the meaning of Section 2(11) of the Act. He is empowered to hire employees and has done so, makes work assignments and provides work direction necessitating the use of independent judgment, is held responsible for the work product of his department, approves vacation and time off requests, requires employees to work overtime when he judges it necessary, and determines which employees will be sent to out-of-town games. That some of the individuals hired by Callan may be temporary or casual employees and, thus, not within the scope of the unit, is insufficient to deny supervisory status. *Union Square Theatre Management, Inc.*, 326 NLRB No. 17 (1998).

Having found Ron Callan to be a supervisor, I decline to clarify the unit by his inclusion therein.

Terry Rose

The Employer's production department is responsible for writing, producing, casting and performing taped voice commercials heard on its radio stations and some for an unrelated station, KING-FM. The department is headed by production director Terry Rose, who held the same position with Bonneville, at which time he was included in the unit. Rose reports to Kris Olinger. The Employer's sales department secures sponsor contracts for commercials to be prepared and produced by Rose's department. Often production department employees also meet with these clients to discuss their needs before creating the commercials. The department is also responsible for airing taped commercials received from outside the stations as well as public service announcements.

Department employees include unit employees Brad Perkins, writer/producer, and Jay Green, writer/producer/talent. All three individuals perform all aspects of commercial production. Rose and these employees each have special areas of expertise or knowledge, such as humor, sports, real estate or cooking. These specialties are taken into account by Rose when the department receives an order to produce a commercial. Thus, a commercial involving sports would be assigned to Perkins, while Green would be given one involving humor or higher education. Should no specialty be involved, the matter is assigned by consensus. Failing that, it is Rose who would determine which one will receive the assignment. (The record does not reflect how frequently this occurs.) In so doing, he takes into account relative work loads and who he considers "best suited" for the job. At times a voice other than that of Rose, Perkins or Green is needed for a particular commercial. At such time, Rose calls in an on-call female employee.¹⁶ Rose may also use an employee outside the production department, but the record does not specify whether he does so by requesting a favor of the individual or making an assignment.

¹⁶ While the record does not specify, I assume this results when a commercial skit has need for a female voice.

Rose has never hired an employee¹⁷ and there have been no terminations in the department. He testified that he has never been told he has the authority to take either action. He verbally authorizes vacation requests but insists they also be presented to Olinger in written form. Olinger testified that Rose has complete authority in this area and that she plays no role. The record does not show that Olinger has ever disapproved a vacation request or made any modifications in requests approved by Rose. Rose also is responsible for ensuring that there are no conflicts in the vacation schedule and that there are always enough employees to perform the department's work. There is no showing this requires independent judgment in a three-person department, as opposed to just letting one person - whoever - vacation at a time. He orders necessary supplies without Olinger's approval, though he testified that Olinger has to approve the expenditures. She has never disapproved one. (While not absolutely clear, the record appears to state that her approval is after the fact.) The record does not reveal whether there are monetary limitations placed on his ability to place orders and, if so, what they are. Rose testified that he is no longer responsible for preparing the department's budget, though he had done so for Bonneville, and that his role is limited to getting the wage information from the human resource department and passing it on to Olinger. Olinger, however, testified that Rose prepares the budget itself. The record does not reflect whether this simply involves summation of past salaries and expenses for a three-person department, or involves planning, choice-making and proposing salary increases. Rose testified that he does not know if he is authorized to approve overtime, that while overtime is worked, it is not billed to the Employer. To the contrary, Olinger testified that Rose is authorized to approve overtime and has done so. No documentation was entered into evidence to resolve the issue. There is no showing this requires real judgment. In either event, Rose initials employee time sheets "to testify that it's accurate"¹⁸ but he also stated that some time sheets go through without his initials. The record does not reveal the circumstances of these instances. Surprisingly for an alleged supervisor, Rose does not approve or review the work produced by Perkins or Green. The record does not reveal who, if anyone, performs this function. Rose attends the weekly supervisory meeting, though the record does not reveal whether labor matters are considered at such meetings and Rose termed them "planning" meetings. Olinger testified that only supervisors and managers attend these sessions.

Rose testified that Bonneville told him he was a supervisor and that he considered himself one when working for that entity. However, as he testified, the Employer has not told him the same and, inasmuch as he is not invited to management retreats¹⁹ and no longer receives gifts²⁰ normally given supervisors at Bonneville and is not otherwise treated like a supervisor by the Employer, he does not consider himself one now.

After carefully examining the record evidence, I conclude the Employer has failed in its burden of showing Terry Rose to be a supervisor. The record does not demonstrate any ability to terminate, promote, layoff or recall, suspend, reward, discipline or transfer employees or to adjust their grievances. Evidence concerning authority in hiring employees is speculative, as I have noted, and cannot be considered here. Evidence concerning his role in approving vacations is inconclusive and disputed. He

¹⁷ Both Perkins and Green have been in their positions for years. Olinger testified that when there is a need to hire another employee, Rose would "most likely" screen resumes and select candidates. Such testimony is speculative and I place no reliance upon it.

¹⁸ Rose testimony, TR 177.

¹⁹ The record does not reveal what occurs at such retreats.

²⁰ He testified, however, that he is not aware whether the Employer has given such gifts to individuals acknowledged to be supervisors.

does not pass on the quality of the work produced by the department's employees. I judge his role in assigning work to be of a routine nature and not involving use of significant discretion. Whether he can require that overtime be worked is not undisputed. However, even if the record clearly showed that he requires the one remaining department employee to work overtime in order that the work of an absent third employee may be covered, this is insufficient to confer supervisory status inasmuch as real discretion is not involved. While Rose initials some time sheets and inspects them for accuracy, others are approved by the Employer without any involvement by Rose at all. This, of course, is a secondary supervisory indicium which alone would be insufficient to confer supervisory status. The same is true concerning his attendance at weekly meetings termed "management or supervisory meetings" by the Employer. There was no evidence adduced to reveal that personnel or work policies are discussed at these meetings. His role in the creation of the departmental budget is disputed and incomplete in any event. Thus, there is no showing that he possesses any authority whatsoever in the determination of employee salaries which largely make up such a budget as opposed to filling a merely reportorial role. As to his ordering supplies, the Employer has failed to show that he possesses genuine authority to commit significant monies without the approval of a higher official.²¹ Finally, I note the small size of the department and what would be a 2:1 employee/supervisor ratio - if Rose were a supervisor, an unusual ratio for a group so apparently self-directed that the "supervisor" does not even review their work. In summary, the picture painted by this record is one of an individual whose role is more akin to that of a lead than a statutory supervisor. Accordingly, I find Terry Rose not to be a supervisor and I shall not clarify the unit by his exclusion therefrom.

ORDER

IT IS HEREBY ORDERED that the collective bargaining unit be clarified to include Brian Gregory and Terry Rose that the petition herein be dismissed as to the inclusion of Ron Callan.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive

²¹ Committing the employer's credit is, of course, more closely related to a managerial rather than a supervisory analysis.

Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C. by March 3, 1999.

DATED at Seattle, Washington, this 17th day of February, 1999.

/s/ PAUL EGGERT

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